

§ 1-507.46. Use or transfer of receivership property not in ordinary course.

(a) Use Not in Ordinary Course. – With court approval, a receiver may use receivership property other than in the ordinary course of business.

(b) Transfer Not in Ordinary Course. – On motion by the receiver and after notice and a hearing, the court may authorize the receiver to transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.

(c) Sale of Receivership Property. – The court may order that the receiver's sale of receivership property is free and clear of all liens and all rights of redemption and claims of exemption of the debtor, regardless of whether the sale will generate proceeds sufficient to satisfy fully all liens and claims of exemption on the receivership property, unless all of the following criteria are met:

- (1) A secured party's lien or the debtor's claim of exemption in the receivership property to be sold will not be paid in full from the proceeds of the proposed sale and the secured party or the debtor files a timely objection to the receiver's motion to sell the receivership property.
- (2) A timely objection is filed and the court, after notice and hearing, determines that the amount likely to be received by the objecting person from the proceeds of the receiver's sale is less than the amount the objecting person would likely receive within a reasonable time in the absence of the receiver's sale.

A secured party holding a lien and a debtor claiming an exemption in the receivership property to be sold that will not be paid in full from the proceeds of the proposed sale must file an objection to the receiver's motion within 14 days after the receiver delivers a copy of the motion to the secured party and the debtor as provided in G.S. 1A-1, Rule 4(j)(1) or within such earlier or later time as the court shall direct.

The receiver shall have the burden of proof to establish that the amount likely to be received by the objecting person is equal to or more than the amount the objecting person would likely receive within a reasonable time in the absence of the receiver's sale. The court may also require that any transfer of receivership property be subject to confirmation by the court.

(d) Transfer of Lien to Proceeds. – A lien on receivership property which is extinguished by a transfer under subsection (b) of this section attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the receivership property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(e) Manner of Transfer. – A transfer under subsection (c) of this section may occur by means other than a public auction sale. A creditor holding a valid lien on the receivership property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(f) Co-Owned Property. – If any receivership property includes an interest as a co-owner of property, the receiver shall have the rights and powers of the debtor afforded by applicable law, including any rights of partition, but may not sell the property free and clear of the co-owner's interest in the receivership property.

(g) Reversal or Modification of Transfer Order. – A reversal or modification of an order approving a transfer under subsection (b) of this section does not affect the validity of the transfer to a person that acquired the receivership property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer. (2020-75, s. 1.)